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UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL KELLER,)	
)	Case No.
Plaintiff,)	
)	COMPLAINT
v.)	
)	DEMAND FOR JURY TRIAL
MCGRAW-HILL GLOBAL)	
EDUCATION HOLDINGS, LLC)	
and MCGRAW-HILL SCHOOL)	
EDUCATION HOLDINGS, LLC)	
)	
Defendants.)	
)	

Plaintiff Michael Keller (“Keller”), for his Complaint against Defendants McGraw-Hill Education Global Education Holdings, LLC and McGraw-Hill School Education Holdings, LLC (collectively “MHE”) alleges:

STATEMENT OF ACTION

1. This is an action for copyright infringement brought by Keller, the owner of copyrights to the photographs (“Photographs”) described hereafter and originally licensed for limited use by MHE, against MHE for unauthorized uses of Plaintiff’s photographs.

PARTIES

2. Keller is a professional photographer who makes his living by creating and licensing photographs. He resides in Beach Lake, Pennsylvania.

3. MHE is a sophisticated global publisher incorporated in Delaware. MHE sells and distributes its publications in the Eastern District of Pennsylvania and throughout the United States,

1 and overseas, including the publications and ancillary materials in which Plaintiff's photographs
2 are unlawfully reproduced. At all times pertinent to the allegations herein, MHE acted through or
3 in concert with its various imprints, divisions, subsidiaries, affiliates, and/or third parties.

4 JURISDICTION

5 4. This is an action for injunctive relief, statutory damages, monetary damages, and
6 interest under the copyright laws of the United States. This Court has jurisdiction over the subject
7 matter of this action pursuant to 28 U.S.C. §§ 1331 (federal question) and 1338 (copyright).

8 VENUE

9 5. Venue is appropriate in this District pursuant to 28 U.S.C. §§ 1391(a) and (b) and 28
10 U.S.C. §§ 1400(a).

11 FACTS COMMON TO ALL COUNTS

12 6. Keller is the owner of copyrights in the attached photographic images
13 ("Photographs") depicted in Exhibit 1.

14 7. The Photographs have been registered with the United States Copyright Office or
15 have pending copyright registrations. For the Photograph with a pending registration, a complete
16 application, fees, and deposit materials for copyright registration have been received by the
17 Copyright Office in compliance with the Copyright Act, 17 U.S.C. §§ 101, *et seq.*

18 8. Keller entered into a series of contractual agreements ("the Agreements") with The
19 Stock Market ("TSM"), a stock-photo licensing agency, between 1988 and 2001 (Exhibit 2). The
20 Agreements authorized TSM to issue limited licenses for use of Keller's images by third parties, in
21 exchange for reasonable license fees.

22 9. The Agreements specified that TSM would not license any images "on a buy-out or
23 exclusive basis" without prior consent. (Exhibit 2a, page 1, Exhibit 2c, ¶ 1(d)).

24 10. Keller's TSM Agreement was assigned to Corbis Corporation ("Corbis") in or
25 around 2001.

26 11. In 2003, Keller entered into a representation agreement with Corbis, which
27 authorized Corbis to grant third parties limited use licenses for his photographs. A true and correct
28

1 copy of the agreement between Keller and Corbis (“Corbis Agreement”) is attached hereto as
2 Exhibit 3.

3 12. Upon information and belief, between 1990 and 2010, and in response to permission
4 requests from MHE, TSM and Corbis sold MHE limited licenses to use copies of the Photographs
5 in numerous educational publications. *See* Exhibit 1, which includes information from Keller’s
6 royalty statements from TSM and Corbis. Exhibit 1 identifies Keller’s image ID and image
7 description; the TSM or Corbis Invoice number and date; and the MHE imprint that licensed
8 Keller’s image(s). Exhibit 1 also identifies additional license information, including publication
9 title and usage limitations, where known.

10 13. Upon information and belief, the licenses granted to MHE from TSM and Corbis
11 were expressly limited by number of copies, distribution area, image size, language, duration
12 and/or media (print or electronic).

13 14. Upon information and belief, at the time MHE represented to TSM and Corbis that
14 it needed specified, limited licenses to use Keller’s photographs, MHE often knew its actual uses
15 under the licenses would exceed the usage rights it was requesting and paying for.

16 15. Shortly after obtaining the licenses, upon information and belief MHE exceeded the
17 licenses and infringed Plaintiff’s copyrights in various ways, including:

- 18 a. printing more copies of the Photographs than authorized;
- 19 b. distributing publications containing the Photographs outside the authorized
20 distribution area;
- 21 c. publishing the Photographs in electronic, ancillary, or derivative publications
22 without permission;
- 23 d. publishing the Photographs in international editions and foreign publications
24 without permission;
- 25 e. publishing the Photographs beyond the specified time limits.

26 16. Upon information and belief, after obtaining access to the Photographs, MHE used
27 them without any license or permission in additional publications that have not yet been identified.
28

1 Because MHE alone knows of these wholly unauthorized uses, Plaintiff cannot further identify
2 them without discovery.

3 17. MHE alone knows the full extent to which it has infringed Keller's copyrights by
4 making unauthorized uses of the Photographs, but it has not shared this knowledge with Keller.

5 18. Other photographers and stock photography agencies have brought copyright
6 infringement claims against MHE nearly identical to those asserted by Keller in this action. Since
7 2011, MHE has been sued for copyright infringement in furtherance of the scheme described
8 herein in the following actions:

- 9 a. *Viesti Associates, Inc. v. The McGraw-Hill Companies, Inc.*, No. 11-cv-01237
10 (D. Colo.);
- 11 b. *Gibson et al v. The McGraw-Hill Companies, Inc.* No. 11-cv-02765-JPO
12 (S.D.N.Y.);
- 13 c. *Muench Photography, Inc. v. The McGraw-Hill Companies, Inc.*, No. 12-cv-
14 06595 (S.D.N.Y);
- 15 d. *DRK Photo v. The McGraw-Hill Companies Incorporated et al*, No. 12-cv-
16 08093 (D. Ariz.);
- 17 e. *Grant Heilman Photography, Inc. v. The McGraw-Hill Companies, Inc.*, No. 12-
18 cv-02061 (E.D. PA);
- 19 f. *Viesti Associates, Inc. v. The McGraw-Hill Companies, Inc.*, No. 12-cv-00668
20 (D. Colo.);
- 21 g. *Frerck v. The McGraw-Hill Companies, Inc.* No. 12-cv-07516 (N.D. Ill.);
- 22 h. *Panoramic Stock Images, Ltd v. McGraw-Hill Global Educ. Holdings, LLC et*
23 *al. 12-cv-09881 (N.D. Ill.);*
- 24 i. *Young-Wolff v. The McGraw Hill Companies, Inc.* No. 13-cv-04372 (S.D.N.Y.);
- 25 j. *Lefkowitz v. The McGraw-Hill Companies, Inc.* No. 13-cv-05023 (S.D.N.Y.);
- 26 k. *McGraw-Hill Global Education Holdings LLC et al v. Lewine* No. 13-cv-4338
27 (S.D.N.Y.);
- 28 l. *Englebert et al v. McGraw-Hill Global Education Holdings LLC et al*, No. 14-
cv-02062 (E.D. PA);

- m. *Gordon v. McGraw-Hill Global Education Holdings LLC et al*, No. 14-cv-3988 (E.D. PA);
- n. *McGraw-Hill Global Education Holdings LLC et al v. Jon Feingersh Photography, Inc.* No. 14-cv-5050 (S.D.N.Y.);
- o. *McGraw-Hill Global Education Holdings LLC et al v. Minden Pictures, Inc.* No. 15-cv-00243 (S.D.N.Y.);
- p. *Clifton v. McGraw-Hill Global Education Holdings LLC et al.*, No. 15-cv- (N.D. CA);
- q. *Steinmetz v. McGraw-Hill Global Education Holdings LLC et al.*, No. 2:15-cv-06600-ER (E.D.PA); and
- r. *Eastcott v. McGraw-Hill Global Education Holdings LLC et al.*, No. 2:16-cv-00904-GAM (E.D.PA).

19. The following examples of unauthorized printings illustrate MHE's practice of infringing copyrights in photographs:

- a. MHE licensed to print 57,000 copies of images in *Personal Finance*, 7th Edition. It printed 148,674 copies.
- b. MHE licensed to print 59,600 copies of images in *Computing Essentials*, 2005, 16th Edition. It printed 165,736 copies.
- c. MHE licensed to print 100,000 copies of images in *Health and Wellness*, © 2005. It printed 250,790.
- d. MHE licensed to print 100,000 copies of images in *Teen Health*, 2007. It printed 313,226.

20. Numerous instances of MHE's infringements are summarized in documents filed in two parallel cases, *Gordon v. McGraw-Hill Global Education Holdings LLC et al*, No. 14-cv-3988 (E.D. PA) and *McGraw-Hill Global Education Holdings LLC et al v. Jon Feingersh Photography, Inc.* No. 14-cv-5050 (S.D.N.Y.). See Exhibits 4 and 5 attached hereto.

21. On September 23, 2014, a jury sitting in the Eastern District of Pennsylvania found MHE liable for copyright infringement of 38 photographs in 11 textbooks by the same scheme Plaintiff alleges here. See *Grant Heilman Photography, Inc. v. McGraw-Hill School Education*

1 *Holdings, LLC, et al.*, No. 5:12-cv-2061-MMB (Doc. 180, Judgment). The jury awarded \$127,087
2 in actual damages and profits to that stock photography agency for those infringements.

3 22. On November 25, 2014, Judge Rebecca Pallmeyer in the Northern District of
4 Illinois found MHE liable on summary judgment for 81 counts of copyright infringement for
5 engaging in the same scheme Plaintiff alleges here (“ . . . McGraw-Hill violated the licensing
6 agreements in three distinct ways: print overruns, distribution outside the authorized geographic
7 areas, and unlicensed reproductions in electronic media.”). *See Panoramic Stock Images, Ltd. v.*
8 *McGraw-Hill Global Education Holdings, LLC et al.*, No. 1:12-cv-09881 (Doc. 85, Memorandum
9 Opinion and Order, p. 13).

10 23. All exhibits attached hereto are incorporated into this Complaint by this reference.

11 **COUNT I**

12 **COPYRIGHT INFRINGEMENT AGAINST MHE**

13 24. Plaintiff incorporates herein by this reference each and every allegation contained in
14 the paragraphs set forth above.

15 25. The foregoing acts of MHE constitute infringements of Plaintiff’s copyrights in the
16 Photographs in violation of 17 U.S.C. §§ 501 et seq.

17 26. Plaintiff suffered damages as a result of MHE’s unauthorized use of the
18 Photographs.

19 WHEREFORE, Plaintiff requests the following:

20 1. A preliminary and permanent injunction against Defendants and anyone working in
21 concert with Defendants from copying, displaying, distributing, selling or offering to sell Plaintiff’s
22 Photographs described in this Complaint and Plaintiff’s photographs not included in suit.

23 2. As permitted under 17 U.S.C. § 503, impoundment of all copies of Plaintiff’s
24 Photographs used in violation of Plaintiff’s exclusive copyrights as well as all related records and
25 documents and, at final judgment, destruction or other reasonable disposition of the unlawfully
26 used Photographs, including digital files and any other means by which they could be used again
27 by Defendants without Plaintiff’s authorization.

1 3. An award of Plaintiff's actual damages and all profits derived from the unauthorized
2 use of Plaintiff's Photographs or, where applicable and at Plaintiff's election, statutory damages.

3 4. An award of Plaintiff's reasonable attorneys' fees.

4 5. An award of Plaintiff's court costs, expert witness fees, interest and all other
5 amounts authorized under law.

6 6. Such other and further relief as the Court deems just and proper.

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff demands a trial by jury of all issues permitted by law.

9 DATED: April 12, 2016

10 Plaintiff Michael Keller, by his
11 attorneys,

12 

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